

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
ROBERT J. GLADWIN, JUDGE

DIVISION IV

CACR06-671

MARCH 14, 2007

LINDA DIANE NICHOLSON  
APPELLANT

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT  
[NO. CR05-1454]

V.

HON. JOHN LANGSTON,  
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Linda Nicholson was convicted of first-degree battery and residential burglary, for which she was collectively sentenced to five years' imprisonment in the Arkansas Department of Correction and required to pay a fine of \$7500. Her sole point on appeal is a challenge to the sufficiency of the evidence. We affirm.

Appellant was charged with first-degree battery and residential burglary in connection with a forced entry into the home of, and subsequent attack on, Robert Evans, which occurred on December 19, 2004. It was alleged that appellant initially conspired with William Watson, who enlisted the assistance of Brian Reynolds and Justin Mansfield to beat up her husband Edward Nicholson. Nicholson happened to be living next door to Evans at

the time, and the three attackers simply made a mistake as to the directions to Nicholson's house. It is undisputed that none of the co-defendants charged in this case knew Evans prior to the incident.

Appellant was tried before a jury on February 14-15, 2006. The State presented eight witnesses. Evans testified as to the forced entry and beating, as well as the medical attention his injuries required. He did not recognize any of the men who attacked him at his home, and he testified that he did not know appellant prior to this incident. Dr. Mike Moore testified as to the severity of Evans's injuries, including his doubts that Evans would ever regain full use of the small finger on his right hand. Officers Stephanie Johnson and Danielle Dailey, of the Jacksonville Police Department, both testified with respect to the details of crime scene and Evans's injuries. Detective Dailey also discussed receiving an anonymous phone tip in March 2005 from Debbie Sturch, who gave her Martha Tarkington's name as someone who might have information about the case. That tip led her to co-defendant Watson, who then implicated appellant.

William Watson also testified at trial, as part of the State's case-in-chief, as to being introduced to appellant by Tarkington. He explained that appellant told him that Nicholson had beaten her and continued to threaten and harass her. He detailed the requests he received from appellant, over the course of two or three weeks, to break Nicholson's legs and blind him. He also testified to the details of the entry and attack on Evans, as well as his explaining it to Tarkington after the fact. He explained that he misunderstood the directions

that were relayed from appellant through Tarkington and admitted that he had attacked the wrong person.

Martha Tarkington testified, explaining that she was the assistant manager of the Subway restaurant located in the Shell Gas Station in Jacksonville at the time of the incident. She testified that she and appellant were friends, and that she had given appellant's son, Rolondo Chandler, a job at the restaurant. She also knew Watson because his sister, Christy Boone Latourette, was also an employee at Subway. Tarkington detailed how she had introduced appellant to Watson, but she denied ever taking part in the plan to attack Nicholson. She explained that when Watson told her about the attack, she went with him to see which house they had entered and informed him that it was the wrong place. Tarkington stated that she then called appellant to tell her what happened and testified that she was aware that appellant had asked Watson to try again to beat up Nicholson on another weekend.

Watson's sister, Latourette, testified that she had worked for Tarkington for approximately two years and that she met appellant through Tarkington. Appellant also told her that Nicholson was abusing her and that she wanted to have someone beat him up so that he would stop. She testified that she overheard appellant ask her brother to do it, as well as explain to him that there were money and jewelry lying around Nicholson's house and that he could take what he wanted.

Finally, Debbie Sturch testified that she and Tarkington had been friends for years and that she met appellant through Tarkington. She testified that appellant asked her if she knew

anyone that could rough Nicholson up and that she wanted him “as close to death as he can get.” In March 2005, Tarkington later explained the mix-up to Sturch, and how Evans was mistakenly beaten instead of Nicholson. She explained that she called the police within thirty minutes of hearing the story from Tarkington.

At the close of the State’s case-in-chief, appellant moved for a directed verdict on both counts, but the circuit court denied both motions. Appellant then called co-defendants Brian Reynolds and Justin Mansfield to testify as to the forced entry and attack. Neither of them could identify appellant as the woman Watson talked to before the incident but described the attack consistently. Appellant’s son, Chandler, was next to testify. He did not remember seeing appellant at Subway on the day in question, and she did not talk to him about injuring Nicholson. Appellant’s friend, Ray Sneed, testified on her behalf, both as to the abuse she suffered at the hand of Nicholson and to being with her on the day of the incident.

Sherry Funk, a victim specialist for the FBI, also testified on behalf of appellant. She pointed out that she had been working with appellant to gain information about Nicholson, who at the time of the trial was serving a forty-two-month sentence in the federal correction facility in Forrest City, Arkansas, for money laundering. She recounted that appellant had requested her assistance in getting an order of protection entered against Nicholson, but that she never had a conversation with her about wanting to hurt Nicholson.

Finally, Nicholson testified, confirming that at the time of the attack on Evans, he did live in the house next door. He denied abusing appellant and generally discussed their relationship and financial situation. Appellant's counsel renewed the motions at the close of the evidence, and they were again denied by the circuit court. The jury convicted her of both counts and sentenced her as set forth above pursuant to a judgment and commitment order filed on February 27, 2006. Appellant filed a timely notice of appeal on March 24, 2006.

We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Saul v. State*, 365 Ark. 77, \_\_\_ S.W.3d \_\_\_ (2006). In reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *Id.* We affirm a conviction if substantial evidence exists to support it. *Id.* Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.* Circumstantial evidence may constitute substantial evidence to support a conviction. *Whitt v. State*, 365 Ark. 580, \_\_\_ S.W.3d \_\_\_ (2006). The longstanding rule in the use of circumstantial evidence is that, to be substantial, the evidence must exclude every other reasonable hypothesis than that of the guilt of the accused. *Id.* The question of whether the circumstantial evidence excludes every other reasonable hypothesis consistent with innocence is for the jury to decide. *Id.* Upon review, this court must determine whether the jury resorted to speculation and conjecture in reaching

its verdict. *Id.* When a theory of accomplice liability is implicated, we affirm a sufficiency-of-the-evidence challenge if substantial evidence exists that the defendant acted as an accomplice in the commission of the alleged offense. *Cook v. State*, 350 Ark. 398, 86 S.W.3d 916 (2002).

Appellant was charged with first-degree battery, which requires that appellant, acting alone or with one or more other persons, caused serious physical injury to any person under circumstances manifesting extreme indifference to the value of human life. *See* Ark. Code Ann. § 5-13-201. Additionally, appellant was charged with residential burglary pursuant to Ark. Code Ann. § 5-39-201, which is defined as entering or remaining unlawfully in a residential occupiable structure of another person with the purpose of committing in the residential occupiable structure any offense punishable by imprisonment.

Appellant's criminal liability is based upon her status as an accomplice. Under accomplice liability, a person may commit an offense by his own conduct or by that of another person. Ark. Code Ann. § 5-2-401. A person is criminally liable for the conduct of another person when he is the accomplice of another person in the commission of an offense. Ark. Code Ann. § 5-2-402. A person is an accomplice when he solicits, advises, encourages, coerces, aids, agrees to aid, or attempts to aid in the commission of an offense. Ark. Code Ann. § 5-2-403(b)(1-2).

We have said that there is no distinction between principals on the one hand and accomplices on the other, insofar as criminal liability is concerned. *Jefferson v. State*, 359

Ark. 454, 198 S.W.3d 527 (2004). When two people assist one another in the commission of a crime, each is an accomplice and criminally liable for the conduct of both. *Cook, supra*. One cannot disclaim accomplice liability simply because he did not personally take part in every act that went to make up the crime as a whole. *Id.*

Arkansas Code Annotated section 16-89-111(e)(1)(A) provides that a felony conviction cannot be based upon the testimony of an accomplice unless it is corroborated by other evidence tending to connect the defendant to the commission of the offense. The corroborating evidence need not be sufficient standing alone to sustain the conviction, but it must, independent from that of the accomplice, tend to a substantial degree to connect the defendant with the commission of the crime. *Holsombach v. State*, \_\_ Ark. \_\_, \_\_ S.W.3d \_\_ (Jan. 11, 2007). The corroborating evidence may be circumstantial so long as it is substantial; evidence that merely raises a suspicion of guilt is insufficient to corroborate an accomplice's testimony. *Id.* The test is whether, if the testimony of the accomplice were completely eliminated from the case, the other evidence independently establishes the crime and tends to connect the accused with its commission. *Id.*

Viewing the evidence in the light most favorable to the State, we turn to the present case to determine whether there was sufficient evidence to support appellant's conviction. Appellant contends that it cannot be inferred, through the trial testimony or otherwise, that she encouraged, aided, or assisted anyone in committing a battery against the actual victim, Evans. She maintains that no physical evidence presented would give rise to a level of

suspicion against her, and she claims that there was no direct or circumstantial evidence to indicate that she had any intent to cause harm to Evans. Likewise, she argues that she in no way endorsed or authorized any of the actions of Watson, Reynolds, and Mansfield against Evans. As to the residential burglary conviction, appellant maintains that the State offered no corroborative evidence to show that she encouraged or aided any of the primary participants to unlawfully enter into the home of Evans. She argues that the actions of Watson, Reynolds, and Mansfield were their own and should in no way be attributed to her.

The State initially points out that appellant has failed to cite any authority for the argument that the crimes for which she was convicted required the victim to be the same as she intended, and as such, we should not address the argument. *See Kearse v. State*, 65 Ark. App. 144, 986 S.W.2d 423 (1999). Alternatively, the State asserts that under our standard of review, the convictions should be affirmed. The State cites *Andrews v. State*, 344 Ark. 606, 42 S.W.3d 484 (2001), for the proposition that the presence of an accused in the proximity of a crime, opportunity to commit it, and association with a person involved in a crime in a manner suggestive of joint participation, are relevant factors from which the trier-of-fact can infer joint participation in the crime. Additionally, our supreme court has held that one cannot disclaim accomplice liability simply based upon a lack of personal participation in every act that went to make up the crime as a whole. *See id.*

Clearly, Watson's testimony at trial specifically implicated appellant as the "mastermind" of the offenses; however, as an accomplice and co-defendant, his testimony



alone was not enough to support the conviction. That said, the State presented testimony from both Tarkington and Watson's sister, Latourette, implicating appellant in the offenses, including her asking Watson to injure Nicholson, providing directions to and layouts of the house, and describing money and jewelry that could be taken during the incident. Their testimony, which was from non-accomplices in this case, established that appellant solicited, encouraged, and aided in the commission of first-degree battery and residential burglary. Because she intended to cause harm to another person, here Nicholson rather than Evans, it is immaterial under the relevant statutes that Evans was not her intended victim because such intent may be transferred. *See Hubbard v. State*, 334 Ark. 321, 973 S.W.2d 804 (1998).

The outcome of this appeal hinges on the credibility of the witnesses, and the Arkansas appellate courts have made it patently clear that the jury is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *McKenzie v. State*, 362 Ark. 257, 208 S.W.3d 173 (2005). The jury is not required to believe any witness's testimony, especially the testimony of the accused, because he is the person most interested in the outcome of the trial. *Winbush v. State*, 82 Ark. App. 365, 107 S.W.3d 882 (2003). The trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Isom v. State*, 356 Ark. 156, 148 S.W.3d 257 (2004). Accordingly, there is substantial evidence to support the convictions.

Affirmed.

ROBBINS and GRIFFEN, JJ., agree.